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**Cincinnati Bell
Telephone®**

201 E. Fourth Street
P. O. Box 2301
Cincinnati, Ohio 45201-2301
Phone: (513) 397-1393
Fax: (513) 241-9115

September 16, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D. C. 20554

In the Matter of:

Telephone Number Portability

)
)
)

CC Docket No. 95-116

Dear Mr. Caton:

Enclosed are an original and sixteen copies plus two extra public copies of the Reply Comments of Cincinnati Bell Telephone in the above referenced proceeding. A duplicate original copy of this letter and attached Reply Comments is also provided. Please date stamp this as acknowledgment of its receipt and return it. Questions regarding these Reply Comments may be directed to Ms. Patricia Rupich at the above address or by calling (513) 397-6671.

Sincerely,

David L. Meier

cc: Wanda M. Harris, Competitive Pricing Division (diskette)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

SEP 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Telephone Number Portability) CC Docket No. 95-116
) RM 8535

REPLY COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

Cincinnati Bell Telephone Company ("CBT") submits these reply comments in response to the comments filed in this proceeding on August 16, 1996. In its comments CBT proposed that the only competitively neutral cost recovery mechanism for number portability costs is a mandatory end-user surcharge. CBT further suggested that any cost recovery mechanism must enable carriers to recover all costs incurred to implement number portability. The cost recovery mechanisms recommended by other parties to this proceeding were quite varied. Several commenters offered proposals similar to CBT's, while others put forth proposals which would not allow carriers to recover all their costs and, thus, would not be competitively neutral and could result in an unconstitutional taking of property. In these reply comments, CBT addresses several significant issues raised by the cost recovery proposals put forth by the various parties to this proceeding.

I. All Costs A Carrier Incurs To Implement Number Portability Must Be Recoverable

Most parties commenting in this proceeding agree with the Commission's classification of costs (i.e., shared costs, carrier-specific direct costs, and carrier-specific indirect costs).

However, there is disagreement over whether carriers should be able to recover their indirect costs. CBT submits that those commenters who contend that carriers should absorb all indirect costs, such as upgrading to SS7 or adding AIN capabilities,¹ are not considering all the changes required to implement number portability. Nor are they considering the likely impact this proceeding will have on the investment decisions of all affected carriers. It is simply wrong to assume that a carrier would have made such upgrades in the absence of a number portability mandate. Obviously, if a company could have made a business case for the upgrades, or if customers demanded such upgrades, prior to the number portability mandate, the company would have undertaken them. However, to the extent the carrier is required to undertake investments that it would not have otherwise made, or is required to make such investments earlier than planned, it must be permitted to recover those costs as directly related to number portability. Contrary to the public comments of some,² LEC shareholders must not be required to underwrite the costs of this regulatory mandate. A failure to permit sufficient cost recovery would result in an unconstitutional taking of LEC property. As USTA correctly pointed out in its comments, costs which a carrier incurs "directly related to number portability in that no business case can be made for that particular company, or for a particular switch, and which are incurred solely because of the Commission's regulatory mandate" should be recoverable as direct costs.³ This position is supported by several other commenters.⁴

¹ See, for example, Frontier p. 3, MCI p.11, and Sprint pp.9-10.

² See, Wall Street Journal, page B1, September 13, 1996.

³ USTA p. 2.

⁴ See, for example, California Department of Consumer Affairs ("CDCA") p. 9, GTE pp.5-6, and NYNEX pp. 3-4.

CBT notes that upgrade costs will not be incurred only by small rural carriers. Many larger carriers will also incur upgrade costs. Even carriers that already employ SS7 and AIN may need to upgrade their switches earlier than otherwise planned in order to accommodate number portability. As CBT and Pacific Telesis recommend in their comments, carriers incurring such costs earlier than planned should be able to recover as a direct cost the opportunity cost or increase in net present value attributable to making the investment sooner than it would otherwise have occurred.⁵

II. No Allocation of Costs is Necessary

Commenters offer a variety of ways in which to allocate shared and pooled costs: gross telecommunications revenue less payments to other carriers,⁶ gross telecommunications revenue,⁷ retail telecommunications revenue,⁸ retail minutes,⁹ lines,¹⁰ numbers,¹¹ and queries.¹² CBT believes that any allocation method is inherently problematic because it will inappropriately allocate the bulk of the costs to the incumbent LECs, thus violating the competitively neutral

⁵ CBT p.3, Pacific Telesis p. 9.

⁶ Frontier pp. 3-4, MFS p. 7, and Time Warner pp. 8-9.

⁷ USTA p. 12

⁸ Ameritech p. 6, Bell Atlantic pp. 4-5, and NYNEX pp. 8-9.

⁹ Airtouch pp. 7-8.

¹⁰ MCI p. 6, and the Public Utilities Commission of Ohio ("PUCO") p. 6.

¹¹ GSA p. 7.

¹² Omnipoint p. 2.

standard. The Commission has concluded that the Telecommunications Act of 1996 precludes recovery of number portability costs from the cost causers. However, that does not mean that the recovery mechanism must disproportionately burden incumbent LECs.

CBT urges the Commission to take note of the many problems commenters cite regarding the various allocation methods¹³ as support for CBT's position that the Commission should use a cost recovery method that does not rely on allocation of costs among carriers. CBT's cost recovery methodology does not require any allocation.¹⁴ Under the CBT proposal, the LNPA will be reimbursed for all shared costs through the end-user surcharge. Therefore, it is not necessary to allocate these costs to individual carriers. Likewise, because carriers will recover their carrier-specific costs through the surcharge, there is no need to reallocate these costs among carriers in an attempt to achieve a competitively neutral distribution of costs.

If the Commission ultimately decides on a cost recovery method that relies upon an allocation of costs among carriers, CBT submits that it must be adjusted at least annually, and must contain a settlement period or true-up to ensure that all carriers that benefit from number portability share in the costs. As the PUCO suggests,¹⁵ without "such a long-term recovery mechanism, new entrants will be encouraged to delay entry until the non-recurring costs have been borne by other carriers."

¹³ See, for example, Airtouch pp. 2-7, Ameritech pp. 5-7, Bell Atlantic pp. 5-7, CTIA pp. 3-4, GSA pp. 6-8, NYNEX pp. 7-9, Omnipoint pp. 2-4, and PUCO p. 6.

¹⁴ CBT notes that the cost recovery mechanism proposed by GTE is very similar and also would not require an allocation.

¹⁵ PUCO p. 9. The CDCA at p. 15 also recommends that "a truly 'competitively neutral' approach might have to take account of the future changes in market share enjoyed by various providers."

III. Any Plan Which Requires Carriers To Absorb Their Own Costs Is Not Competitively Neutral

Many commenters suggested that carriers be required to absorb their own costs.¹⁶ Some of those then go on to suggest that the carriers be allowed to recover those costs as they see fit,¹⁷ while others propose restrictions on how those costs could be recovered.¹⁸ If number portability costs were simply a cost of doing business, not a regulatory mandate, and if all companies had complete pricing flexibility, it would arguably be competitively neutral to have each carrier recover its own costs as it sees fit. However, neither of these conditions are present in this case. Number portability is required of each carrier, regardless of whether or not the carrier will benefit from offering it; the costs will be far more significant for incumbent LECs than for new entrants; and incumbent LECs do not have the pricing flexibility to recover their costs as they see fit. Under such circumstances, it is disingenuous to argue that requiring carriers to recover their costs as they see fit is competitively neutral when not all carriers have the ability to do so.

At some point in the future when all number portability start-up costs have been recovered and all carriers are subject to the same regulatory rules, it may make sense to move to a system where carriers absorb their own costs. At this point in time, however, the only competitively neutral cost recovery mechanism is a mandatory end-user surcharge. If the Commission does not adopt the mandatory end-user surcharge approach, CBT submits that the

¹⁶ See, for example, ALTS p. 6, AT&T pp. 12-13, Frontier p.2, MFS p. 3, PUCO p. 7, and Time Warner p. 13.

¹⁷ See, for example, Frontier p. 4, PUCO p. 7, and Time Warner p. 6.

¹⁸ See, for example, ALTS pp. 4-5, AT&T pp.10-15, and MFS p. 4.

Commission must grant incumbent LECs the pricing flexibility to recover their costs from their customers, including purchasers of unbundled elements and resellers as suggested by US West.¹⁹

IV. Mandatory Surcharge On End-Users Is The Only Competitively Neutral Cost Recovery Mechanism

There is considerable support among the commenters for an end-user surcharge,²⁰ and the majority of those commenters recommend that the surcharge be mandatory.²¹ Suggestions by ALTS and Teleport that an explicit surcharge on customer bills would be misleading, disparaging, or would promote hostility toward number portability and potential competitors,²² are without merit so long as all competing carriers are required to include the surcharge as CBT and others have recommended. CBT submits that the surcharge must be mandatory and explicitly indicated on customer bills so that carriers cannot use the level of the surcharge as a means to attract customers. As the California Department of Consumer Affairs indicates "the customers of one local exchange telecommunications provider (whether an incumbent or a new provider) will not pay a share of the LNP implementation costs that is disproportionate to the LNP implementation costs paid by customers of other local exchange telecommunications providers. In that way, the LNP implementation costs will be distributed in a way which neither deters, nor encourages, telecommunications customers to change providers, because customers

¹⁹ US West p. 21.

²⁰ See, for example, CDCA pp. 11-12, Bell Atlantic p. 8, Frontier p. 4, GSA p. 10, and NYNEX p. 11-12.

²¹ Ameritech p. 8, CDCA p. 12, GTE p. 11, NYNEX pp. 11-12, SBC p. 10, and USTA p. 19.

²² ALTS p. 4; Teleport p. 10.

would not be able to avoid paying for, or would not pay a lower portion of the cost of, LNP implementation by changing providers."²³

By mandating number portability as a part of the pro-competitive framework of the Telecommunications Act of 1996, Congress has made a public policy decision that U.S. consumers will benefit from the implementation of number portability. Consumers have a right to know how much they are paying for that benefit. CBT agrees that potential customer dissatisfaction about the cost of providing number portability is not an adequate basis for failing to disclose that cost to consumers.²⁴

Of those commenters who support a mandatory end-user surcharge, some recommend that the surcharge be a flat amount per line,²⁵ while others recommend that it be a percentage of the monthly bill.²⁶ CBT submits that a flat amount is preferable to a percentage of the customer's bill due to the predictability a flat charge provides for consumers and because the value to consumers of number portability is not related to the amount they spend on telecommunications services in a particular month. Similarly, number portability costs do not increase directly in proportion to the amount a customer spends on telecommunications services. To more closely track how number portability costs are incurred, CBT recommends that the surcharge be applied as a flat amount per telephone number. As GSA points out, numbers and lines are not the

²³ CDCA p. 12.

²⁴ CDCA pp. 22-23, footnote 11.

²⁵ Ameritech p. 8, GTE p. 13, Pacific Telesis p. 10.

²⁶ Bell Atlantic p. 8, CDCA p. 24, NYNEX p. 11.

same.²⁷ Since the purpose of the surcharge is to recover number portability costs, and a company will incur costs in porting each number, CBT believes that a per number surcharge will more accurately reflect number portability costs and benefits to consumers.

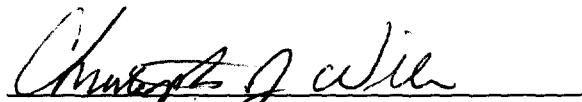
In addition, since all telecommunications consumers will eventually have the ability to have their numbers ported, CBT also recommends that the non-recurring cost portion of the surcharge be applied to all customers' bills, not just those who have the ability to have their number ported at a particular time. Furthermore, by spreading the number portability costs over a larger customer base, the per number surcharge amount will be lower.

²⁷ GSA p. 10.

V. Conclusion

CBT urges the Commission to adopt a cost recovery mechanism that enables all carriers to fully recover their costs and which does not place an undue burden on the customers of one carrier over those of another. The evidence in this proceeding indicates that the only means of accomplishing this task is a uniform mandatory end-user surcharge.

Respectfully submitted,



Christopher J. Wilson
FROST & JACOBS
2500 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202
(513) 651-6800

Thomas E. Taylor
Sr. Vice President-General Counsel
Cincinnati Bell Telephone Company
201 East Fourth Street, 6th Floor
Cincinnati, Ohio 45202
(513) 397-1504

Attorneys for Cincinnati Bell
Telephone Company

Dated: September 16, 1996

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing **Reply Comments of Cincinnati Bell Telephone Company** have been delivered by first class United States Mail, postage prepaid, on September 16, 1996, to the persons on the attached service list.



Amy K. Collins

William Caton, Acting Secretary
Federal Communications Commission
1919 M Street NW Room 222
Washington DC 20554

Policy and Program Planning Division
Federal Communication Commission
1919 M Street NW Room 544
Washington DC 20037

International Transcription Services Inc
2100 M Street NW Suite 140
Washington DC 20337

Competitive Pricing Division
Common Carrier Bureau
1919 M Street NW Room 518
Washington DC 20554

Charles Helein
Helein & Associates
ACTA
8180 Greensboro Drive Suite 700
McLean VA 22102

Werner Hartenbeger
Dow Lohnes & Albertson
AdHoc
1255 Twenty Third Street NW Suite 500
Washington DC 20037

James Blaszak
Levine Blaszak Block and Boothby
AdHoc Telecommunications users Committee
1300 Connecticut Avenue NW Suite 500
Washington DC 20036

Carl Northrop
Bryan Cave
AirTouch
700 13th Street NW Suite 700
Washington DC 20005

Kathleen Abernathy
Airtouch Communications Inc
1818 N Street NW Suite 800
Washington DC 20036

Mark Stachiw
AirTouch Paging
Tree Forest Plaza
1221 Merit Drive Suite 800
Dallas TX 75251

Carl Johnston
Paul Hastings Janofsky & Walker
AirTouch Paging/Arch Communications Group
1299 Pennsylvania Ave NW 10th Floor
Washington DC 20004-2400

Larry Peck
Ameritech
2000 West Ameritech Center Dr Rm 4H86
Hoffman Estates IL 60196-1025

Robert Gurss
Wilkes Artis Hedrick & Lane
APCO
1666 K Street NW Suite 1100
Washington DC 20006

Richard Metzger
Associates for Local
Telecommunications Services
1200 19th Street NW Suite 560
Washington DC 20036

Clifford Williams
AT&T Corporation
295 North Maple Avenue Rm 3252I1
Basking Ridge NJ 07920

Betsy Anderson
Bell Atlantic
1320 N Court House Road
Arlington VA 22201

John Goodman
Bell Atlantic
1133 20th Street NW
Washington DC 20036

John Scott
Crowell & Moring
Bell Atlantic NYNEX Mobile Inc
1001 Pennsylvania Avenue NW
Washington DC 20004-2595

David Kahn
Bellatrix International
4055 Wilshire Blvd Suite 415
Los Angeles CA 90010

Jim Llewellyn
BellSouth Corporation
1155 Peachtree Street NW Suite 1800
Atlanta GA 30309-3610

Gardner Yanowitz Sinsheimer Johns
California Cable Television Association
4341 Piedmont Avenue
Oakland CA 94611

Virginia Taylor
California Department of Consumer Affairs
400 R Street Suite 3090
Sacramento CA 95814-6200

Donna Lampert
Mintz Levin Cohn Ferris Glovsky
CCTA
701 Pennsylvania Avenue NW Suite 900
Washington DC 20004

Michael Altschul
Cellular Telecommunications
Industry Association
1250 Connecticut Avenue NW Suite 200
Washington DC 20036

Ellen Deutsch
Citizens Utilities Company
8100 Northwest Parkway Drive Suite 150
Vancouver WA 98662

Joel Levy
Cohn & Marks (NWRA)
1333 New Hampshire Avenue NW Suite 600
Washington DC 20036

Christopher Savage
Cole Raywid & Braverman (Jones)
1919 Pennsylvania Avenue NW Suite 200
Washington DC 20006

Anthony Marquez
Colorado Public Utilities Commission
1580 Logan Street Office Level 2
Denver CO 80203

Werner Hartenberger
Dow Lohnes & Albertson
Cox Enterprises Inc
1200 New Hampshire Ave NW Suite 800
Washington DC 20037

James Hobson
Donelan Cleary Wood & Maser
1100 New York Avenue NW Suite 750
Washington DC 20005-3934

David Jatlow
Young & Jatlow
Ericsson Corporation
2300 N Street Suite 600
Washington DC 20037

Glenn Richards
Fisher Wayland Cooper Leader &
Zaragoza (TIA)
200 Pennsylvania Avenue NW Suite 400
Washington DC 20006

Cynthia Miller
Florida Public Service Commission
Gunter Building
2540 Shumard Oak Boulevard Room 301
Tallahassee FL 32399-0850

Michael Shortley
Frontier Corporation
180 South Clinton Avenue
Rochester NY 14646

Michael Ettner
General Services Administration
18th & F Streets NW Room 4002
Washington DC 20405

Kathy Shobert
General Communication Inc
901 15th Street NW Suite 900
Washington DC 20005

Darren Nunn
Ginsburg Feldman and Bress (ISA)
1250 Connecticut Avenue NW
Washington DC 20036

Leo Fitzsimon
GO Communications Corporation
201 N Union Street Suite 410
Alexandria VA 22314

Jeffrey Linder
Wiley Rein & Fielding
GTE Service Corporation
1776 K Street NW
Washington DC 20006

Gail Polivy
GTE Service Corporation
1850 M Street NW Suite 1200
Washington DC 20036

Robert Schoonmaker
GVNW Inc Management
2270 LA Montana Way
Colorado Springs CO 80918

Melanie Haratunian
Halprin Temple Goodman & Sugrue (YPPA)
1100 New York Avenue NW Suite 650 East Tower
Washington DC 20005

Richard Wolters
Illinois Commerce Commission
527 East Capitol Avenue
PO Box 19280
Springfield IL 62794-9280

Sam LaMartina
Independent Telecommunications
Network Inc
8500 W 110th Street Suite 600
Overland Park KS 66210

David Irwin
Irwin Campbell & Tannenwald
ITC
1730 Rhode Island Avenue NW Suite 200
Washington DC 20036

Danny Adams
Steven A. Augustino
Kelley Dry & Warren
1200 19th Street NW Suite 500
Washington DC 20036

Margot Smiley Humphrey
Koteen & Naftalin (TDS)
1150 Connecticut Avenue NW Suite 1000
Washington DC 20036

Richard Nelson
Marion County BD/County Commissioners
911 System Support Department
263 SE 3rd Street
Ocala FL 34471-9101

Loretta Garcia
MCI Telecommunications Corporation
1801 Pennsylvania Avenue NW
Washington DC 20006

Andrew Lipman
Swidler & Berlin
MFS Communications Inc
3000 K Street NW Suite 300
Washington DC 20007

Lampert Harris
Mintz Levin Cohn Ferris Glovsky
701 Pennsylvania Avenue NW Suite 900
Washington DC 20004

RogerSteiner
Missouri Public Service Commission
PO Box 360
Jefferson City MO 65102

Gene Belardi
MobileMedia Communications Inc
2101 Wilson Boulevard Suite 935
Arlington VA 22201

Paul Rodgers
NARUC
1102 ICC Building PO Box 684
Washington DC 20044

Neal Goldberg
National Cable Television Association Inc
1724 Massachusetts Avenue NW
Washington DC 20036

David Cosson
National Telephone Cooperative Association
2626 Pennsylvania Avenue NW Suite 1001
Washington DC 20037

Richard Askoff
NECA
100 South Jefferson Road
Whippany NJ 07981

John Starrs
New York State Department
of Public Service
Three Empire State Plaza
Albany NY 12223-1350

Lawrence Krevor
Nextell Communications Inc
800 Connecticut Avenue NW Suite 1001
Washington DC 20006

Sydney Peterson
Niagra Telephone Company
1133 Main Street
Niagra WI 54151-0003

Maureen Thompson
Deborah Haraldson
NYNEX
1095 Avenue of the Americas
New York NY 10036

Campbell Ayling
NYNEX Telephone Companies
1111 Westchester Avenue
White Plains NY 10604

Mark O'Connor
Piper & Marbury
Omnipoint Communications Inc
1200 19th Street NW 7th Floor
Washington DC 20036

Lisa Zaina
OPASTCO
21 Dupont Circle NW Suite 700
Washington DC 20036

Theresa Cabral
Pacific Bell
140 New Montgomery Street Room 1526
San Francisco CA 94105

Jeffrey Linder
Wiley Rein & Felding
Pacific Bell
1776 K Street NW
Washington DC 20006

Nancy Woolf
Pacific Telesis Group
140 New Montgomery Street Room 1530A
San Francisco CA 94105

John Hunter
Reed Smith Shaw & McClay
PageNet
One Franklin Square Suite 1100 East Tower
Washington DC 20005

Mark Golden
PCIA
500 Montgomery Street Suite 700
Alexandria VA 22314-1561

William Roughton
PCS PrimeCo
1133 20th Street NW
Washington DC 20036

Ann Henkener
Public Utilities Commission Of Ohio
180 E Broad Street
Columbus OH 43215-3793

Pat Wood
Public Utility Commission of Texas
7800 Shoal Creek Blvd
Austin TX 78757

David Brown
SBC Communications Inc
175 E Houston Room 1254
San Antonio TX 78205

Gordon Scherer
Scherers Communication Group Inc
575 Scherers Court
Worthington OH 43085

Norina Moy
Sprint Corporation
1850 M Street NW Suite 1110
Washington DC 20036

Mary Mack Adu
State of California and the Public Utilities
Commission of State of California
505 Van Ness Avenue
San Francisco CA 94102

Charles Hunter
Hunter & Mow
Telecommunications Resellers Association
1620 I Street NW Suite 701
Washington DC 20006

Victoria Schlesinger
Telemation International Inc
6707 Democracy Blvd
Bethesda MD 20817

Teresa Marrero
Teleport Communication Group Inc
Two Teleport Drive Suite 300
Staten Island NY 10311

Richard Muscat
Texas Advisory Commission
on State Emergency (TX-ACSEC)
PO Box 12548 Capitol Station
Austin TX 78711-2548

Jere Glover
United States Small Business Administration
409 Third Street SW Suite 7800
Washington DC 20416

Charles Cosson
United States Telephone Association
1401 H Street NW Suite 600
Washington DC 20005

Thomas Moorman
Kraskin & Lesse
US INTELCO
2120 I Street NW Suite 520
Washington DC 20037

Jeffrey Bork
US West Inc
1020 19th Street NW Suite 700
Washington DC 20036

Pamela Portin
US Air Waves Inc
10500 NE 8th Street Suite 625
Bellevue WA 98004

BB Knowles
Utilities Division of Georgia
Public Service Commission
244 Washington Street SW
Atlanta GA 30334-5701

Sue D Blumenfeld
Willkie Farr & Gallagher(Time Warner)
Three Lafayette Center
1155 21st Street NW
Washington DC 20036

Dana Frix
Swidler & Berlin
WinStar Communications Inc
3000 K Street N W Suite 300
Washington DC 20007

Richard Whitt
WorldCom Inc d/b/a LDDS WorldCom
1120 Connecticut Avenue NW Suite 400
Washington DC 20036